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Defendant FREIGHTLINER CUSTOM
7 CHASSIS CORPORATION

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 ROLAND NATOLI and BARBARA
NATOLI,

13 Plaintiff,

14 vs.

15 TIFFIN MOTORHOMES, INC., a
16 Corporation and DOES 1 through
100,

17 Defendant.

18
19 TIFFIN MOTORHOMES, INC.,

20 Cross-Complainant,

21 vs.

22 FREIGHTLINER CUSTOM
23 CHASSIS CORPORATION and
ROES 1 through 10, inclusive.

24 Cross-Defendants.

CASE NO. 08 CV 0879 W WMc

**ANSWER OF DEFENDANT,
FREIGHTLINER CUSTOM
CHASSIS CORPORATION TO
TIFFIN MOTORHOMES, INC.'S
CROSS-COMPLAINT**

Action Filed: November 29, 2007
Trial Date: None Set.

1 Defendant FREIGHTLINER CUSTOM CHASSIS CORPORATION, for itself
2 and itself alone, in answer to cross-complainant TIFFIN MOTORHOMES, INC.'S
3 Cross-Complaint ("Complaint") on file herein, admits, denies and alleges as
4 follows:

5 **GENERAL DENIAL**

6 1. By virtue of and pursuant to the provisions of Code of Civil Procedure
7 section 431.30, this answering cross-defendant generally and specifically denies
8 each and every, all and singular, conjunctively and disjunctively, allegation
9 contained in said Cross-Complaint, and each and every part thereof, and each
10 and every cause of action thereof, and further specifically denies that plaintiff has
11 been injured or damaged in the sum alleged, or in any other sum, or at all, by
12 reason of any carelessness, negligence, act or omission of this answering cross-
13 defendant.

14 **FIRST AFFIRMATIVE DEFENSE**

15 2. As a first and separate affirmative defense to the cross-complaint, this
16 answering cross-defendant alleges that each cause of action is barred by the
17 applicable statute of limitations.

18 **SECOND AFFIRMATIVE DEFENSE**

19 3. As a second and separate affirmative defense to the cross-complaint,
20 this answering cross-defendant alleges that each of the causes of action fails to
21 set forth facts sufficient to constitute a cause of action against this answering
22 cross-defendant.

23 **THIRD AFFIRMATIVE DEFENSE**

24 4. As a third and separate affirmative defense to the cross-complaint,
25 this answering cross-defendant alleges that cross-complainants are barred from
26 proceeding with said causes of action for failure to provide the requisite notice to
27 defendant regarding their warranty claims.
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FOURTH AFFIRMATIVE DEFENSE

5. As a fourth and separate affirmative defense to the cross-complaint, this answering cross-defendant alleges that cross-complainants lack standing to sue and are not in privity with defendant.

FIFTH AFFIRMATIVE DEFENSE

6. As a fifth and separate affirmative defense to the cross-complaint, this answering cross-defendant alleges that cross-complainants and/or their agents acted negligently, recklessly, or intentionally in and about the matters alleged herein and to the extent that cross-complainants seek recovery for the alleged negligence, reckless and/or intentional acts and/or omissions of this answering cross-defendant, recovery should be offset to the extent of cross-complainants' own negligent, reckless, and/or intentional actions and/or omissions.

SIXTH AFFIRMATIVE DEFENSE

7. As a sixth and separate affirmative defense to the cross-complaint, this answering cross-defendant alleges that cross-complainants' damages, if any, were proximately caused by the negligent, reckless, or intentional acts of third parties as to whom this answering cross-defendant had neither the right nor the duty nor the opportunity to exercise control and who acted without the knowledge, participation, approval, or ratification of this answering cross-defendant.

SEVENTH AFFIRMATIVE DEFENSE

8. As a seventh and separate affirmative defense to the cross-complaint, this answering cross-defendant alleges that cross-complainants are guilty of unreasonable delay in filing suit herein, which delay has caused prejudice to this answering cross-defendant and that, therefore, this action is barred by laches.

EIGHTH AFFIRMATIVE DEFENSE

9. As an eighth and separate affirmative defense to the cross-complaint, this answering cross-defendant alleges that cross-complainants are barred from asserting each and every purported cause of action in the complaint by reason of

1 cross-complainants and their agents having ratified, consented, and approved the
2 alleged wrongful acts and/or omissions of this answering cross-defendant.

3 **NINTH AFFIRMATIVE DEFENSE**

4 10. As a ninth and separate affirmative defense to the cross-complaint,
5 this answering cross-defendant alleges that cross-complainants are equitably
6 estopped from asserting each and every purported cause of action in the
7 complaint by reason of the acts, the omissions, and conduct of cross-
8 complainants and/or certain of their agents upon which this answering cross-
9 defendant relied to its prejudice and detriment.

10 **TENTH AFFIRMATIVE DEFENSE**

11 11. As a tenth and separate affirmative defense to the cross-complaint,
12 this answering cross-defendant alleges that cross-complainants are barred from
13 recovering on each and every purported cause of action by reason of waiver.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 12. As an eleventh and separate affirmative defense to the cross-
16 complaint, this answering cross-defendant alleges cross-complainants are barred
17 from recovering on each and every purported cause of action by virtue of their
18 unclean hands.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 13. As a twelfth and separate affirmative defense to the cross-complaint,
21 this answering cross-defendant alleges that all of cross-complainants' causes of
22 action are barred because cross-complainants and/or their agents had the
23 opportunity to and did fully inspect the product in question and approved of the
24 condition of the product.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 14. As a thirteenth and separate affirmative defense to the cross-
27 complaint, this answering cross-defendant alleges that cross-complainants could
28 have, by the exercise of reasonable diligence, limited or prevented their damages,

1 if any, as a result of the alleged wrongful acts set forth in the complaint and that
2 they have failed or refused to do so. Such failure or refusal on the part of cross-
3 complainants constitute a failure to mitigate their damages.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 15. As a fourteenth and separate affirmative defense to the cross-
6 complaint, this answering cross-defendant alleges that cross-complainants were,
7 at all times, fully apprised of all material facts regarding each and every act
8 alleged in the complaint and that cross-complainants acted or refrained from
9 acting with the full knowledge of all circumstances.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 16. As a fifteenth and separate affirmative defense to the cross-complaint,
12 this answering cross-defendant alleges that all of the work allegedly performed by
13 defendant was performed in a workmanlike manner, which was performed in
14 accordance with all applicable codes, ordinances, and regulations, and was
15 approved by all applicable municipal agencies.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 17. As a sixteenth and separate affirmative defense, this answering cross-
18 defendant alleges that the damages allegedly sustained by cross-complainants
19 were the proximate result of cross-complainants' or others' misuse of the product
20 or subsequent modification, repair and/or maintenance of the product involved.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 18. As a seventeenth and separate affirmative defense, this answering
23 cross-defendant alleges that all events, happenings, and damages, if any, as set
24 forth in the complaint were the result of an unforeseeable Act of God.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 19. As an eighteenth and separate affirmative defense, this answering
27 cross-defendant alleges that defendant's product was duly inspected, approved
28 and accepted by the cross-complainants, their agents and duly authorized

1 representatives, payment(s) was/were made pursuant to the terms and conditions
2 of any contracts between said persons and this defendant.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 20. As a nineteenth and separate affirmative defense, this answering
5 cross-defendant alleges that the losses and damages allegedly sustained by
6 cross-complainants, if any, were proximately caused by the intervening and
7 superseding acts of others, which intervening and superseding acts bar and/or
8 diminish cross-complainants' recovery, if any, against this answering cross-
9 defendant.

10 **TWENTIETH AFFIRMATIVE DEFENSE**

11 21. As a twentieth and separate affirmative defense, this answering cross-
12 defendant alleges that, prior to and at the time of the sale herein, there was
13 attached to the goods a conspicuous writing which clearly informed the buyer in
14 simple and concise language that the goods were being sold pursuant to a limited
15 warranty which is limited to repair and replacement of conditions and/or
16 components covered under the warranty; that the entire risk as to the quality and
17 performance of the goods was with the buyer; and that should the goods prove
18 defective following their purchase, the buyer and not the manufacturer, distributor
19 or retailer assumed the entire cost of all necessary servicing or repair. As a
20 result, defendant effectively disclaimed any implied warranties, including, but not
21 limited to, recovery of consequential damages, the implied warranty of
22 merchantability and implied warranty of fitness for a particular purpose, and by
23 that sale plaintiff effectively waived any such warranty.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 22. As a twenty-first and separate affirmative defense, this answering
26 cross-defendant alleges that any defect or nonconformity of which the cross-
27 complainants complain in this matter was proximately caused by the unauthorized
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1 or unreasonable use of the goods by the cross-complainants following sale and
2 delivery thereof by defendant to cross-complainants.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 23. As a twenty-second and separate affirmative defense, this answering
5 cross-defendant alleges that the component parts which are alleged to have been
6 defective were not expressly warranted by this responding party. Therefore,
7 cross-complainants are barred from seeking express warranty damages against
8 this responding party.

9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 24. As a twenty-third and separate affirmative defense, this answering
11 cross-defendant alleges that cross-complainants' cause of action for breach of
12 express warranty and incidental and consequential damages is barred by the
13 express disclaimers and limitations of liability contained in the alleged express
14 warranties made by this defendant.

15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 25. As a twenty-fourth and separate affirmative defense, this answering
17 cross-defendant alleges that because of cross-complainants' continued use of the
18 vehicle, cross-complainants have waived their right to seek restitution or
19 rescission-type damages against defendant as a matter of law.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

26. As a twenty-fifth and separate affirmative defense, this answering cross-defendant alleges that cross-complainants have failed to provide defendant with a reasonable opportunity to repair the vehicle, thereby waiving any claim for damages.

DATED: September 8, 2008

MURCHISON & CUMMING, LLP

By: 

Richard C. Moreno
Anastasia K. Mazzella
Attorneys for Defendant/Cross-
Defendant FREIGHTLINER CUSTOM
CHASSIS CORPORATION

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